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TRANSMITTAL FORM

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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/775,881
	Filing Date	02/10/2004
	First Named Inventor	Luc Lemmens, et al.
	Art Unit	3683
	Examiner Name	Christopher P. Schwartz
Total Number of Pages in This Submission	Attorney Docket Number	1316N-001663

ENCLOSURES (check all that apply)

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Harness, Dickey & Pierce, P.L.C.	Attorney Name	Michael J. Schmidt	Reg. No.	34,007
Signature					
Date	December 12, 2005				

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Confirmation No. 1429

Application Number: 10/775,881
Filing Date: February 10, 2004
Appellant(s): Luc Lemmens, et al.

Michael J. Schmidt

For Appellants

APPELLANTS' REPLY BRIEF

APPELLANTS' REPLY BRIEF

This Reply Brief is in response to the Examiner's Answer which was mailed October 13, 2005. Please consider the following reply.

RELATED APPEAL AND INTERFERENCES

The Examiner states that the Brief does not contain a statement identifying the related appeals and interferences. The Table of Contents on page i identifies that the Related Appeals and Interferences is located on page 2 of the Appeal Brief. Page 2 identifies that there are no related appeals or interferences pending. Appellants have accessed the Appeal Brief on the PAIR system and page 2 of the Brief is included. Thus, Appellants believe the Examiner's statement regarding the Related Appeals and Interferences is incorrect.

GROUND OF REJECTION

The Examiner defines Vermolen, et al. as having a membrane 78 defining an aperture 108. This is the first definition by the Examiner of a membrane defining an aperture perhaps because of his 35 U.S.C. § 112 rejection in the final Office Action. Element 108 is actually a restriction between membrane 78 and annular projection 96. Assuming we allow the Examiner's definition of aperture 108 to stand, the limitations of Claim 1 are clearly still not met.

Claim 1 defines that the membrane moves between a first position where a passage is open to allow fluid flow through a passage between the first and second chambers and a second position where a passage is closed. The membrane defines an aperture to allow a specified amount of fluid flow between the chambers when the passage is closed.

If we accept the Examiner's position that membrane 78 defines aperture 108, then aperture 108 does not allow fluid flow when membrane 78 closes the passage since aperture 108 is closed when the fluid passage is closed. Thus, Vermolen, et al. does not function as claimed by pending Claim 1. Vermolen, et al. does not disclose, teach or suggest a membrane which defines an aperture to allow fluid flow between the first and second chambers when the membrane closes the fluid passage.

RESPONSE TO ARGUMENTS

The Examiner first states "It is further noted that they now state that the 'aperture' is at 130, contrary to what is disclosed in the specification, and contrary to their arguments in response to the Final Rejection." On page 2 of our April 21, 2005 response to the Final Office Action we stated, "In paragraph 31 of page 12 and as shown in Figures 4 and 5, lower membrane 52b comprises a plurality of flexible plates 128. Within two of bottom plates 128 of lower membrane 52b is a passage 130. Passage 130 allows a small amount of fluid to pass from bottom chamber 126 into a chamber 132 to be communicated out to outlet 116. Thus, membrane 52b in Figure 4 defines passage 130. Reconsideration of the rejection is respectfully requested." Thus, again we believe that the Examiner's statement is incorrect.

The Examiner argues that to the extent that Appellants' device is capable of letting fluid flow through aperture 130 when in the closed or second position as discussed in the specification is the same as the device of Vermolen, et al. The Examiner goes on to say that Appellants' specification is somewhat lacking in this regard. Appellants respectfully disagree. Paragraph 32 on page 13 describes the entire air adjustment valve 22b shown in Figure 4. Here it states that lower membrane 52b is pressed against support 140.

Paragraph 31 on page 12 discloses the passage 130 which is defined within two of the bottom plates. Passage 130 allows a small amount of fluid to pass between chambers 126 and 132. During small and low flow rates, passage 130 is sufficient to allow venting of fluid between chambers 126 and 132. However, as fluid flow increases, passage 130 cannot handle the fluid flow and membrane 52b flexes to open a flow path between chambers 126 and 132. Thus, Appellants believe the specification fully supports the function and definition of passage 130.

The Examiner argues that the device in Vermolen, et al. as shown in Figure 3 is capable of the same limited flow function but the Examiner fails to discuss how in Vermolen, et al. when membrane 78 sits on seat 96 how the fluid flows between passage 98 and chamber 102. With restriction 108 being closed, fluid flow is prevented. The Examiner argues that because of the angle with which membrane 78 must seat on 96 that apparently the Examiner feels the fluid will leak around the contact area. Actually, the smaller contact area due to the angular relationship will result in higher contact pressure between the components thus providing a better seal.

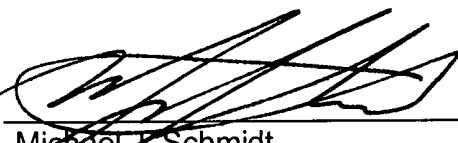
The Examiner's second argument is that if we take it for a fact that restriction 108 is closed, the Examiner is going to define the first chamber as 92 and 98, the second chamber as 112, 110 and the aperture 106 in membrane 78. The problem with this interpretation is that the valve regulates fluid flow between the first chamber and the second chamber through a fluid passage. The membrane is movable to open and close the fluid passage. With 106 being the only passage between the first and second chambers defined by the Examiner, membrane 78 does not move to open and close this fluid passage.

Thus, Appellants believe that Vermolen, et al. does not disclose all of the elements of the claimed invention defined by Claim 1. Specifically, Vermolen, et al. fails to disclose, teach or suggest an aperture to allow a specified amount of fluid flow between the first chamber and the second chamber when the membrane closes the fluid passage.

Appellants invention provides the art with a shock absorber which is controlled by a valve and the shock absorber includes a bleed flow of a specified amount even when the fluid passage is closed. Accordingly, reversal of the final rejection of Claims 1-3, 5 and 6, as well as Claim 4, which ultimately depend from Claim 1, and allowance of these claims is respectfully requested.

Respectfully submitted,

Dated: December 12, 2005

By. 
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